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Human Rights Council
Working Group on Arbitrary Detention

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No. 19/2013 (Morocco)

Communication addressed to the Government on 7 May 2013

Concerning: Mohamed Dihani

The Government replied on 10 July 2013.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. Its mandate was extended and clarified by the Commission in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, as established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Mohamed Dihani, who was born in Al-Aiun on 10 October 1986, is a Moroccan citizen, holder of passport No. R 152464, resident at Hay El Fateh, 77 Rue Doumyat, Al-Aiun, and works as an unaccredited translator for the Italian press. On 28 April 2010, he was arrested on Boulevard Al Hizam, Al-Aiun, by plain clothes agents of the Directorate-General for National Surveillance (DGST), who did not show a warrant for or inform him of the reason for his arrest. Mr. Dihani was put in a car and driven to the police station in Al-Aaiun.

4. Mr. Dihani lived in Italy from 2002 to 2008, where he worked as a wine waiter in a restaurant on the island of Elba in the province of Livorno during the holiday season, and as a grape harvester. Later he worked with his father, trading second-hand cars.

5. Abdelmoula Dihani, Mr. Dihani's father, went to the police station, where he was made to wait for 12 hours before the police authorities denied having arrested his son. The police confiscated his passport, which was returned to him only 20 days later.

6. According to the information received, Mohamed Dihani was held incommunicado for six months in Témara. His family was not informed of his whereabouts. The source considers that, during this period, Mr. Dihani was a victim of forced or involuntary disappearance.

7. It is alleged that during this time Mr. Dihani was asked to cooperate with the Moroccan intelligence services by providing information about the activities of the leaders of Frente Polisario. Refusing to cooperate, he was tortured for more than 10 days and forced to confess to crimes of conspiracy and terrorism.

8. The torture and ill-treatment inflicted on Mr. Dihani affected him both physically and psychologically. It consisted of beating him while he was blindfolded and had his hands tied, preventing him from sleeping by waking him up every hour, and threatening him with rape.

9. On 29 October 2010, Mr. Dihani's parents were informed that their son was being detained by the national brigade of the criminal investigation department in Casablanca.

10. Mr. Dihani was accused of having planned terrorist attacks in Denmark, the Holy See and Italy while he was resident in Italy with his father. The source points out, however, that the Moroccan authorities did not request the cooperation of the authorities of the aforementioned European countries in order to confirm these accusations.

11. On 27 October 2011, Mr. Dihani was sentenced by the Rabat Criminal Court to 10 years' imprisonment for crimes of conspiring to commit or committing terrorist acts under article 218-1, paragraph 9, and article 218-7 of Act No. 03/03 (the Anti-Terrorism Act) of 28 May 2003. According to the source, the charges against Mr. Dihani are unfounded. The conviction is based purely on the confessions of another suspect, and those made by Mr.

Dihani himself, in police premises without the presence of a lawyer. The source condemns the fact that Mr. Dihani's confession was obtained under torture and regrets that neither the court nor the Moroccan administrative authorities have ordered an investigation. Mr. Dihani has also accused the intelligence services of having fabricated accusations against him.

12. Mr. Dihani appealed the sentence, and on 14 April 2013, the Rabat Court of Appeal commuted the prison sentence from 10 to 6 years' deprivation of liberty.

13. The source considers Mr. Dihani's trial to have been unfair and illegal, with a predetermined outcome. He did not enjoy the right to a fair and just trial, or the right of detainees to communicate freely with counsel of their choosing. Furthermore, no investigations have been opened into the torture inflicted on Mr. Dihani, the confessions he was forced to make, or the fact that he was held incommunicado for six months.

14. The attempts by Mr. Dihani's father to locate his son went unanswered: his complaint to the Prosecutor-General of Al-Aiun submitted on 3 May 2010, a further complaint to the Crown Prosecutor-General on 27 May 2010, one to the Crown Prosecutor in Al-Aiun on 2 August 2010 or the complaint he filed with the Ministry of Justice on 17 August of the same year.

15. Mohamed Dihani is currently being held in Salé prison, Rabat, under particularly harsh conditions generally applied to those convicted of committing grave acts of terrorism. The source adds that Mr. Dihani has been subjected to further torture since being convicted and, on several occasions, has been removed from the prison illegally.

16. The source considers Mr. Dihani's detention to be arbitrary and contrary to article 9 of the Universal Declaration of Human Rights; article 1, paragraph 1, and articles 9, 10, 14, 20 and 23 of the International Covenant on Civil and Political Rights, to which the State is a party; and principles 4, 6, 8 to 13, 15 to 21, 23 to 27, 32 to 34 and 36 to 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

17. Mr. Dihani's detention can also be considered to constitute a violation of his freedom of thought, opinion and expression, as enshrined in articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The fact that he was sentenced for supporting Frente Polisario constitutes criminal punishment for the legitimate exercise of his rights.

18. The source adds that Mr. Dihani's detention is discriminatory, since he has been detained on the grounds of his Saharawi national and ethnic origin.

19. Accordingly, the source requests Mr. Dihani's immediate release and that he be granted appropriate and fair financial compensation commensurate with the amount of time spent as a victim of enforced or involuntary disappearance, the torture and ill-treatment to which he was subjected, and his arbitrary detention. The source also requests that Mr. Dihani be granted an official apology and adequate guarantees of non-repetition.

20. On 18 January 2013, while visiting his son in Salé prison, Abdelmoula Dihani was arrested, accused of attempting to bring a number of telephone bugs into the prison. He spent 72 hours in custody before being released pending his trial.

Response from the Government

21. The Working Group, in a letter dated 7 May 2013, requested the Government's reaction to the above allegations. The Government responded in the form of a note verbale, dated 10 July 2013. Based on the information at its disposal, the Working Group considers that it is in a position to issue an opinion.

22. In its reply, the Government contends that, following the dismantling of a terrorist cell, the police arrested Mohamed Dihani on 29 October 2010, for involvement in the cell's

criminal activities. Mr. Dihani was remanded in custody in criminal investigation police premises in Casablanca for the statutory period of 96 hours, as laid down by article 66 of the Code of Criminal Procedure, which was renewed twice on the written authorization of the Prosecutor-General. During this time, his family was informed of his arrest and of the whereabouts of his detention, and he was visited by his lawyer from the early hours of his detention, in line with article 23 of the new Constitution, which provides for punishment for arbitrary or incommunicado detention and enforced disappearance. This invalidates the allegations of incommunicado detention. Furthermore, in application of the aforementioned provisions, the Kenitra Court of Appeal has recently sentenced members of the Royal Police Force to 10 years' deprivation of liberty for arbitrary detention.

23. The Government adds that the investigation and trial took place in accordance with international standards, in the presence of a group of lawyers, who appealed the sentence. The court of appeal then reduced the sentence. Mr. Dihani subsequently applied to the cassational court, where his case remains pending; the principle of exhaustion of domestic remedies should therefore be applied.

24. Mohamed Dihani is an ordinary prisoner, since he was tried for having planned to rent a workshop in which to make explosive devices, using instructions found on the Internet, with a view to carrying out attacks in the Kingdom of Morocco, particularly against western interests, the security services and vital sectors of the national economy.

25. The Government also refutes the allegations of ill-treatment during detention, stating that Mr. Dihani enjoyed the same rights as his fellow inmates. It adds that the investigation, opened by the penitentiary administration, into allegations of Mr. Dihani's torture and ill-treatment while in prison, had no foundation. The Government emphasizes that Mr. Dihani behaved in a subversive manner and that this behaviour had been the subject of several reports by the penitentiary administration, most recently in March 2013, in connection with riots, in which he played an active role.

26. Lastly, the Government states that Mohamed Dihani's father was caught *in flagrante delicto*, smuggling six telephone memory cards into the family visiting room at the prison. Abdemoula Dihani admitted attempting to pass the cards illegally to his son; he was therefore arrested and remanded in custody for investigation.

Further comments from the source

27. The Government's response was sent to the source for comments, and by a letter dated 14 August 2013, the source confirmed the initial allegations, mentioning other arguments and facts that cannot be considered, since they were not included in the communication sent to the Government. Furthermore, the source refers extensively to recent reports of the Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment.

Discussion

28. First and foremost, it is important to point out that the principle of exhaustion of domestic remedies is not applicable to the Working Group, not only because under its mandate a rapid response is required, but above all because there is no provision made for it in its working methods, as confirmed by its jurisprudence, which is consistent in this regard.

29. That being said, the allegations submitted by the source are based on: the failure to show Mr. Dihani a warrant or to inform him of the reasons for his arrest; his incommunicado detention; the acts of torture to coerce confessions during the preliminary investigation, without any administrative or judicial investigation being instituted to verify

the legality of those confessions; and the fact that Mr. Dihani was arrested as a result of exercising his right to freedom of expression to support the cause of Frente Polisario.

30. In its response, the Government provides specific replies to all of the allegations except those relating to the acts of torture committed during the police investigation. This is particularly troubling given the specific and clear manner in which the allegations are expressed. Yet the Government does not explain why neither an administrative nor a judicial investigation was ordered, especially when Mr. Dihani's confessions, extracted under torture, were a determining factor in his heavy sentence.

31. On this issue, the Government is obliged, under article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it is a party, to "ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed", while article 15 of the same Convention provides that "any statement which is established to have been made as a result of torture shall not be invoked as evidence".

32. Furthermore, in paragraph 8 of its concluding observations on the fourth periodic report of Morocco (CAT/C/MAR/CO/4), submitted in November 2011, the Committee against Torture notes with concern that, under the Anti-Terrorism Act No. 03-03 of 2003, "the period during which a person may be held in police custody is extended to 12 days, and access to a lawyer is not permitted until after the sixth day, which places suspects who are being held in custody at greater risk of torture". The Committee continues: "It is precisely while they cannot communicate with their families and lawyers that suspects are most vulnerable to torture (arts. 2 and 11)."

33. In paragraph 10 of the above-mentioned concluding observations, the Committee against Torture states that it "is concerned by numerous allegations regarding torture and ill-treatment committed by police officers, prison staff and, in particular, agents of the National Surveillance Directorate (DST) who are acting as members of the criminal investigation police force when people are deprived of basic legal safeguards, such as access to legal counsel, particularly in the case of people who are suspected of belonging to terrorist networks or of being supporters of independence for Western Sahara and in the course of interrogations carried out in order to extract confessions from persons suspected of terrorism (arts. 2, 4, 11 and 15)".

34. The Working Group refers to its opinion No. 40/2012 concerning Mohamed Hajib.

Disposition

35. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

> The detention and sentencing based solely on confessions obtained under torture and accusations made by a co-defendant, with no evidence, material or otherwise, and without any investigations to verify the sincerity of the confessions, are contrary to the provisions of articles 9 to 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and fall within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

36. Consequent upon the opinion rendered, the Working Group urges the Government to release Mohamed Dihani immediately, to order an independent and impartial investigation into the acts of torture to which he was subjected while being remanded in custody, and to take all the legal measures pursuant to its international obligations, by reviewing the case and, if appropriate, granting full compensation for the damages incurred.

37. The Working Group decides to bring the allegations of torture to the attention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

[*Adopted 27 August 2013*]